

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSE LUIS CARLOS MARTINEZ,

Plaintiff,

vs.

No. CIV 99-672 LH/LCS

**LAWRENCE A. TAFOYA, Warden,
Southern New Mexico Correctional Facility,
and, ATTORNEY GENERAL FOR THE
STATE OF NEW MEXICO,**

Defendants.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court on the Plaintiff's Motion to Reopen the Case filed September 27, 2001. (*Doc. 49*). The Final Order dismissing the case in this matter was filed on October 11, 2000 (*Doc. 43*). Therefore, I consider the Plaintiff's Motion as a Rule 59 Motion to Amend or to Set Aside Judgment. After reviewing the Motion and the relevant law, I find that this Motion is not well taken and should be denied.

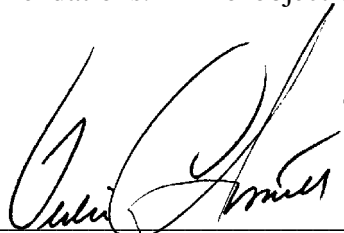
1. Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly. 11 Wright, Miller & Kane Civil 2d § 2810.1, 124 (1999). A Rule 59 motion may be granted only to correct manifest errors of law or fact upon which the judgment is based, to present newly discovered or previously unavailable evidence, to prevent manifest injustice, or to reflect an intervening change in controlling law. *Id.* Rule 59 may not be used to

re-litigate old matters, or to raise arguments or present evidence that could have been raised prior to judgment. *See Steele v. Young*, 11 F. 3d 1518, 1520 n. 1 (10th Cir. 1993). In light of their narrow purpose, Rule 59 motions are seldom granted. 11 Wright, Miller & Kane Civil 2d § 2810.1 at 128. The decision of whether to grant or deny a Rule 59 motion is committed to the sound discretion of the trial court. *Phelps v. Hamilton*, 122 F. 3d 1309, 1324 (10th Cir. 1997).

2. The Plaintiff's Motion merely raises the same arguments raised within the Plaintiff's Petition for Writ of Habeas Corpus which were properly disposed of by an Order by the District Judge Adopting the Magistrate Judge's Proposed Findings and Recommended Disposition. (*Doc. 43*).

RECOMMENDED DISPOSITION

I recommend that the Plaintiff's Rule 59 Motion to Amend or to Set Aside Judgment filed as a Motion to Reopen the Case on September 27, 2001. (*Doc. 49*) should be **DENIED**. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no objections are filed, no appellate review will be allowed.



LESLIE C. SMITH
UNITED STATES MAGISTRATE JUDGE